IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.719 of 2001

1. Naresh Sakharam Patil

2. Ramesh Sakharam Patil .. .. Appellants
(Orig.Appellant Nos.1 & 2)

(At present in Thane Central Prison)

V/s.

The State of Maharashtra
(At the instance of Narpoli
Police Station, Dist. Thane.). .. .. Respondent

Mr.Ganesh Gole for Appellants.

Mr.P.H. Hingorani, APP for State.

**CORAM : DR.S. RADHAKRISHNAN &
SMT.ROSHAN DALVI, JJ.**

Date of reserving the judgment : 5th July, 2007

Date of pronouncing the judgment : 13th July 2007

JUDGMENT : (Per Smt.Roshan Dalvi, J.)

1. This Appeal is filed by Appellant Nos.1 and 2 against conviction and sentence for offences punishable under

Sections 302, 307, 336, 337 and Section 34 of the Indian Penal Code read with Section 135 read with Section 37(1) of the Bombay Police Act.

2. The Appellants have challenged the judgment dated 19.7.2001 of the Additional Sessions Judge, Thane, convicting them for life under Section 302 read with Section 34 of the IPC and for payment of Rs.1,000/- each and in default to suffer further rigorous imprisonment for one year. They have also been convicted under Section 307 read with Section 34 of the IPC and sentenced to suffer rigorous imprisonment for 9 months for offence committed under the said section. They are further convicted under Section 135 read with Section 37(1) of the Bombay Police Act and sentenced to suffer rigorous imprisonment for 6 months and to pay a fine of Rs.100/- each and in default, to suffer further rigorous imprisonment for one month. The substantive sentences have to run concurrently. The sentences in default of fine are to run consequitively under the impugned judgment.

3. It has been the case of the prosecution that on 24.6.1997 at about 9 p.m. the Appellants were engaged in a hot exchange of words with one Kailas Patil, who was their employee and one Kaluram and his nephew one Pralhad intervened to pacify the hot exchange of words between them. It is the case of prosecution that at that time, Appellant No.1 with an intent to kill, dealt a blow with kudal on the head of the said Pralhad and Appellant No.2, with intent to kill, dealt an axe blow on the head of his uncle Kaluram. This resulted in the death of Kaluram and serious injuries to Pralhad. They were shifted to the Singhania hospital. The Police were called in. Kaluram succumbed to his injuries. Thereafter Pralhad recovered. Pralhad lodged a complaint in the early morning hours of the next day in the hospital itself. The earlier charge under Section 307 came to be altered to the charge under Section 302 of the IPC upon the death of Kaluram.

4. The day after the complaint was lodged, the Appellants came to be arrested. They have accordingly, been in custody

from 25.6.1997 till date.

5. The prosecution examined the complainant and several eye witnesses who were a part of the scuffle to prove by oral evidence the case of the prosecution. The prosecution has produced the medical evidence relating to the treatment given to the complainant as well as his uncle in the hospital. The prosecution also relied upon an inquest panchanama which came to be prepared upon the death of Kaluram, the spot panchanama, which was prepared after the offence came to be registered, the arrest panchanama upon the arrest of the Appellants on the next day and the panchanama relating to the recovery of the weapons and the clothes of the deceased and the Appellants at the instance of the Appellants.

6. The oral evidence led by the prosecution essentially shows that the Appellant as well as the injured witnesses were neighbours. They were all agriculturists. They lived close to one another. Kailas patil worked for the Appellant. The nature of work shows a stark similarity with bonded

labour. Kailas had to work for 15 days at a time as he had to repay a debt to Appellant No.1. He, therefore, made a grievance that he did not desire to work any more with Appellant No.1 after his 15-day work ended. Appellant No.1 got annoyed on this and had a scuffle with Kailas. There were hot exchange of words between the Appellants and Kailas, which were witnessed by the Complainant. Consequently, the Complainant, who is an injured witness and his uncle, who succumbed to his injuries in the incident, intervened to pacify them. He tried separating them but was pushed by Appellant No.1 and abused. Then Appellant No.1 dealt a blow of kudal on the head of the Complainant and thereafter Appellant No.2 dealt an axe blow on the head of the Complainant's uncle Kaluram.

7. This essential eye witness account has not been disturbed in the cross-examination. In fact, the cross-examination shows the neighbourhood in which the parties lived. It further shows that they were at arms length during the incident. It is not even the case of the Appellants that

they have been falsely implicated. A vague attempt at showing dim lighting at the scene of the offence has been made. However, the Complainant has deposed that there were lights from the nearby houses at the scene of the offence. Parties knew each other and hence, the identification of each of them has to be accepted. The weapons that they used were stark and deadly. Hence, proper identification of weapons is also made.

8. The cross-examination shows the reiteration of the push, abuses as well as the fatal blow upon Kaluram and forcible blow upon the Complainant. The cross-examination further shows the place of the injuries as well as their extent. It is an admitted position that the Complainant was hospitalized and received treatment. His uncle met with a homicidal death. The cross-examination specifically shows that the Complainant's uncle was at the distance of ¾ feet from the Complainant at the time of the assault. It further shows how Kaluram fell to the ground and the Complainant went to him within a minute.

9. The case put to the Complainant was also of the hot exchange of words between the Appellant and their employee Kailas. However, it is admitted by the Complainant that there was no dispute between them and the Appellant prior to the incident.

10. This evidence has been, in essence, corroborated.

11. From the oral evidence, it becomes clear that there was no enmity between the assaulter and the assaultee, that there was an exchange of hot words between the Complainant and his uncle, the employee of Appellant No.1. The Complainant as well as his uncle received severe injuries upon their intervention and the attempt at pacifying the two. Hence, pre-meditation on the part of the Appellants is ruled out. Since there was no dispute between the parties earlier, and no enmity or motive for commission of the offence has been shown, the intention to cause death of the Complainant's uncle is ruled out.

12. However, the fact that the Appellants used dangerous weapons such as kudal and axe leaves no manner of doubt

that the knowledge to cause such bodily injury as would result in death, must be imputed upon them.

13. There is no reason to disbelieve the eye witness account of the injured witness, the Complainant corroborated by the other witnesses as well as the medical evidence.

14. It is, therefore, seen that the Appellants need not have been convicted for the offences of murder punishable under Section 302 of the IPC as has been held by the learned trial Judge. The conviction for offences punishable under Section 304(11) of the IPC would, therefore, suffice.

15. Our attention has been drawn to the case of ***Ramesh Vithalrao Thaktre & anr. vs. State of Maharashtra***, **AIR 1995 S.C. 1453** in which only one injury was caused by a knife to the intervenor, conviction under Section 304(11) of the IPC has been maintained.

16. In the result, this Appeal partly succeeds. The conviction of the Appellants under Section 302 of the IPC is set aside. The sentence of imprisonment for life is also, therefore, set aside. The Appellants are found guilty and

convicted for offences punishable under Section 304(ii) of the IPC and sentenced to suffer RI for a period extending 10 years. The conviction under the Bombay Police Act is not challenged. The rest of the judgment and order is confirmed.

17. The fine imposed upon the Appellants shall be paid, in default of which the Appellants shall undergo the sentence as imposed in the impugned judgment.

18. Appeal stands disposed of accordingly.

(DR.S. RADHAKRISHNAN, J.)

(ROSHAN DALVI, J.)